



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION**

ROBERT DAVIS SMITH JR.,	§	
Plaintiff,	§	
	§	
vs.	§	
	§	CIVIL ACTION 8:20-01996-MGL-JDA
PAUL B. WICKENSIMER and TRACY	§	
STARKES,	§	
Defendants.	§	

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
AND DISMISSING PLAINTIFF'S ACTION WITH PREJUDICE  
AND WITHOUT ISSUANCE AND SERVICE OF PROCESS**

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Plaintiff Robert Davis Smith Jr. (Smith), a state prisoner, filed this lawsuit pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the action be dismissed without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on June 19, 2020, and the Clerk of Court entered Smith's objections on July 6, 2020. The Court has reviewed the objections, but holds them to be without merit. It will therefore enter judgment accordingly.

This Court need not conduct a de novo review of the record "when a party makes general and conclusory objections that do not direct the court to a specific error in the [Magistrate Judge's] proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The Court reviews the Report and Recommendation only for clear error in the absence of specific objections. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record to accept the recommendation.") (citation omitted).

Here, Smith has wholly failed to bring any specific objections to the Report. Instead, his objections read more like an appeal of a state circuit court decision. But, this Court "possess[es] no power whatever to sit in direct review of state court decisions." *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296 (1970).

Inasmuch as Smith neglects to make any specific objections, and the Court has found no clear error, it need not make a de novo review of the record before accepting the Magistrate Judge's recommendation.

Further, inasmuch as Smith was warned of the consequences of failing to file specific objections, Report at 9, he has waived appellate review. *See Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508-09 (6th Cir. 1991) (holding general objections are insufficient to preserve appellate review).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Smith's objections, adopts the Report, and incorporates it herein.

Therefore, it is the judgment of the Court this action is **DISMISSED WITH PREJUDICE** and without issuance and service of process.

**IT IS SO ORDERED.**

Signed this 31st day of August, 2020, in Columbia, South Carolina.

s/ Mary Geiger Lewis  
MARY GEIGER LEWIS  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

Smith is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.